

1 Christopher Pitoun (SBN 290235)
2 christopherp@hbsslaw.com
3 HAGENS BERMAN SOBOL SHAPIRO LLP
4 301 North Lake Avenue, Suite 920
5 Pasadena, CA 91101
6 Telephone: (213) 330-7150

7 *Attorneys for Plaintiff and the Class* [Additional Counsel Listed on Signature Page]

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 JENNIFER BENTLEY, as trustee of
12 the 2001 Bentley Family Trust, and
13 others similarly situated.

14 Plaintiffs,

15 v.

16 UNITED OF DEFENDANT LIFE
17 INSURANCE COMPANY; and DOES
18 1 TO 50, inclusive,

19 Defendants.

No. 15-cv-07870-DMG (AJWx)

**PLAINTIFF'S RESPONSE TO
UNITED NOTICE OF NEWLY
ISSUED DECISION AND NOTICE
OF INTENT TO SEEK A STAY**

Honorable Dolly M. Gee

1 **RESPONSE TO UNITED NOTICE OF NEWLY ISSUED DECISION**
2 **AND NOTICE OF INTENT TO SEEK A STAY**

3 Plaintiff Jennifer Bentley, on behalf of the Class in this action (“Plaintiff”),
4 hereby responds to Defendant United of Omaha Life Insurance Company’s (“United”)
5 Notice of Newly Filed Decision and Notice of Intent to Request a Stay (Dkt. No. 192).
6 As explained herein, the decision cited by United - *McHugh v. Protective Life Insurance*
7 *Company*, Case No. D072863 (“*McHugh*”) – does not impact Plaintiff’s action and
8 should not hold up entry of final judgment or the Court’s decision on Plaintiff’s
9 request for attorneys’ fees, costs and an incentive award.

10 As an initial matter, *McHugh* is not binding on this Court. While state court
11 intermediate appellate rulings should be considered for guidance, only a ruling from a
12 state’s highest court necessarily controls a federal court’s decision of state law. *McKown*
13 *v. Simon Prop. Group, Inc.*, 689 F.3d 1086, 1092 (9th Cir. 2012)(“Since we are sitting in
14 diversity, we must begin with the pronouncements of the state’s highest court, which
15 bind us” *** “We must also keep in mind that *only* the [the state’s highest court]
16 decisions are binding...”)(emphasis in original).

17 Even if *McHugh* were controlling, it would have no bearing on this case because
18 it is factually and legally inapposite. In *McHugh*, the policy-owner’s policy never renewed
19 after the Statutes went into effect. See Opinion at 7 of 20. Given this fact, the *McHugh*
20 court did not analyze the law or arguments concerning the renewal principle, that is,
21 that “[e]ach renewal [of an insurance policy] incorporates any changes in the law that
22 occurred prior to the renewal.” See e.g., *Stephan v. Unum Life Ins. Co. of Am.*, 697 F.3d
23 917, 927-28 (9th Cir. 2012); *Cerone v. Reliance Std. Life Ins. Co.*, 9 F. Supp. 3d 1145,
24 1149 (S.D. Cal. 2014); *Modglin v. State Farm Auto. Ins. Co.*, 273 Cal. App. 2d 693, 700-
25 701 (1969). The decision therefore didn’t address, much less disturb, this long-standing
26 rule of statutory construction.

1 Here, of course, the renewal principle is a core feature of the case. As a
 2 condition of being a member of the Plaintiffs' Class, each policy had to have been
 3 issued, delivered or, as with the Mr. Bentley's policy, renewed after the Statutes went
 4 into effect. See *Summary Judgment Decision*, Feb, 21, 2019, Dkt. No. 174 at 2 of 28.
 5 Moreover, the Court's summary judgment ruling against United was premised on
 6 United's failure to issue the Notice to policies that had renewed. *Id.* at 18-21 of 28.
 7 Indeed, this Court rejected Plaintiffs' arguments that the Statutes could be applied
 8 more broadly to all policies in force after the Statutes' Effective Date. *Id.* at 20 of 28, f.n.
 9 12 ("The parties' extensive briefing regarding the renewal policy makes it clear to the
 10 Court that a renewal must occur before the Statutes can apply to the Class Policies. The
 11 mere concurrence of Class Policies in force when the Statutes became effective is
 12 insufficient for the Statutes to apply to the Class Policies."). In other words, what this
 13 Court has already ruled is entirely consistent with *McHugh*.

14 For the foregoing reasons, Plaintiff submits that the *McHugh* decision should in
 15 no way delay final resolution of this action, and Plaintiff will oppose any request by
 16 United to this end.

17
 18 DATED: October 14, 2019

HAGENS BERMAN SOBOL SHAPIRO LLP

19
 20 By: /s/ Christopher Pitoun

21 Christopher Pitoun (SBN 290235)

22 *christopherp@hbsslw.com*

23 HAGENS BERMAN SOBOL SHAPIRO LLP

24 301 North Lake Avenue, Suite 920

25 Pasadena, CA 91101

26 Telephone: (213) 330-7150
 27
 28

1 Jason A. Zweig
2 *jasonz@hbsslaw.com*
3 HAGENS BERMAN SOBOL SHAPIRO LLP
4 455 N. Cityfront Plaza Drive, Suite 2410
5 Chicago, IL 60611
6 Telephone: (708) 628-4949

7 Paul E. Slater
8 Mitch Macknin
9 Joseph M. Vanek
10 John P. Bjork
11 *pes@sperling-law.com*
12 SPERLING & SLATER, P.C.
13 55 W. Monroe Street, Suite 3500
14 Chicago, IL 60603
15 Telephone: (312) 641-3200

16 David S. Klevatt
17 *dklevatt@chicagolaw.biz*
18 KLEVATT & ASSOCIATES, LLC
19 33 North LaSalle Street, Suite 2100
20 Chicago, IL 60602-2619
21 Telephone: (312) 782-9090

22 *Attorneys for Plaintiff and the Class*
23
24
25
26
27
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